

CITY OF BURIEN, WASHINGTON

RESOLUTION NO. 294

A RESOLUTION OF THE CITY OF BURIEN, WASHINGTON, ENTERING FINDINGS OF FACT AND CONCLUSIONS OF LAW REGARDING APPROVAL OF THE NAVOS MENTAL HEALTH FACILITY TYPE 3 LAND USE REVIEW

WHEREAS, the City of Burien Hearing Examiner conducted an open record public hearing on May 21, 2009 at which testimony from city staff, the applicant and public was heard regarding the Navos Mental Health Facility Type 3 Land Use Review; and,

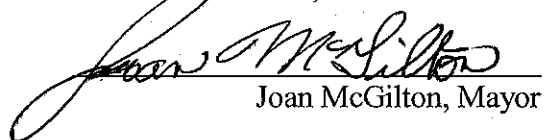
WHEREAS, on June 10, 2009 the Hearing Examiner made a recommendation to the City Council;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF BURIEN, WASHINGTON, DOES RESOLVE AS FOLLOWS:

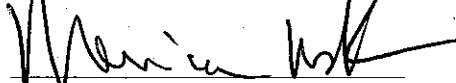
Section 1. The City Council, having considered the Navos Mental Health Facility Type 3 Land Use Review application and the Hearing Examiner's recommendation, conditionally approves the Navos Mental Health Facility Type 3 Land Use Review and adopts the Hearing Examiner's findings and conclusions attached as Exhibit "A", as fully incorporated herein as if fully set forth.

PASSED BY THE CITY COUNCIL OF THE CITY OF BURIEN, WASHINGTON, AT A REGULAR MEETING THEREOF THIS 6th DAY OF JULY, 2009.

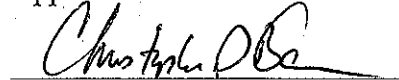
CITY OF BURIEN, WASHINGTON


Joan McGilton, Mayor

ATTEST/AUTHENTICATED:


Monica Lusk, City Clerk

Approved as to form:


Christopher Bacha
Kenyon Disend, PLLC
Interim City Attorney

Filed with the City Clerk: June 30, 2009
Passed by the City Council: July 6, 2009
Resolution No.: 294

**CITY OF BURIEN
HEARING EXAMINER
FINDINGS, CONCLUSIONS AND RECOMMENDATION**

APPLICANT: Mitch Yockey, Donald King Architects for Navos

CASE NO.: PLA 09-100

LOCATION: 1210 SW 136th Street (see Exhibit A, Attachment 1)

APPLICATION: Request to allow construction of a three story, 46,000 square foot Mental Health Facility, along with a 4,000 square foot activity building (see Exhibit A, Attachment 2).

REVIEW PROCESS: Hearing Examiner conducts an open record hearing and makes a recommendation to the City Council, who then makes the final decision.

SUMMARY OF RECOMMENDATIONS

Staff Recommendation: Approve with conditions

Hearing Examiner Recommendation: Approve with conditions

PUBLIC HEARING

After reviewing the official file, which included the Staff Recommendation; and after visiting the site, the Hearing Examiner conducted a public hearing on the application. The hearing on the Navos application was opened at 9:00 a.m., May 21, 2009, in City Hall, Burien, Washington, and closed at 9:40 a.m. Participants at the public hearing and the exhibits offered and entered are listed in this report. A verbatim recording of the hearing is available in the Community Development Department.

Hearing Comments:

The following is a summary of the comments offered at the public hearing.

From the City

Stephanie Jewett, Project Planner
Ramesh Davad, Public Works

From the Applicant

Mitch Yockey
Bill Taylor

The applicants were in general agreement with staff analysis and briefly described the components of the project.

From the Community

Robert Thorpe
Nizar Sayani

Mr. Sayani and Mr. Thorpe were both representing Westmark Emerald Pointe, LLC who are in the permit process for approval of the Emerald Pointe residential development. Emerald Pointe, when approved, will likely take site access via extension of 136th Street roadway improvements. They expressed support for the project. They were requesting that Novas be required to move a proposed bulb-out/sidewalks north out of the 136th Street right-of-way so as not to impede future extension of 136th. In addition, they argued that Novas should complete 136th Street improvements along the entire south boundary of the Novas site, rather than just up to the mid-site access driveway. The applicants argued that other projects have been required to complete street improvements along the length of their properties, and requested the hearing record be held open so they could provide examples. The request was granted.

Marvin Jahnke
Chestine Edgar

Mr. Jahnke expressed support of the application and appreciated the care being given to the sensitive slope in the design of the project. Ms. Edgar was also generally supportive, but primarily had questions regarding the proposed Emerald Pointe project that is adjacent to the west boundary of the Novas property.

FINDINGS OF FACT AND CONCLUSION

1. The Facts presented in the Site Description on page 4 in Exhibit A, Staff Recommendation, May 5, 2009, accurately reflects the site circumstances, zoning requirements and surrounding land uses, and are hereby adopted by reference.
2. The Facts and Conclusions regarding compliance with the Approval Criteria on pages 4 and 5 in Exhibit A, Staff Recommendation, May 5, 2009, are accurate and hereby adopted by reference.
3. The Facts and Conclusion regarding compliance with Development Regulations on pages 5 through 17 in Exhibit A, Staff Recommendation, May 5, 2009, are accurate and are hereby adopted by reference. In particular, they include the following:

General Compliance	pages 5 and 6
Zoning Code Use Chart Compliance	page 6
SEPA	page 6
Significant Tree Retention	page 7

Landscaping Requirements	pages 7 and 8
Parking	pages 8 and 9
Pedestrian Access and Circulation	pages 9 and 10
Critical Areas – Geologically Hazardous Areas	pages 10 through 15
Frontage and Access Improvements	pages 15 and 16
Surface Water Management	pages 16 and 17
Utilities	page 17

4. The Facts and Conclusions regarding compliance with the City's Comprehensive Plan on page 18 in Exhibit A, Staff Recommendation, May 5, 2009, are accurate and are hereby adopted by reference.
5. SW 136th Street is a platted and dedicated right-of-way, extending west from Ambaum Blvd. to the Westmark property. As platted, it has full right-of-way width from Ambaum to approximately the proposed mid-site access driveway for the Novas property, and then half-width west to the Westmark site. As noted in Exhibit B, there is currently pedestrian use of this undeveloped stretch of the right-of-way.

SW 136th Street is improved from Ambaum to the Novas property where it begins a curve to the south and becomes 12th Avenue SW, which then proceeds south approximately 900 feet where it curves east and connects back to Ambaum Blvd. As noted by City staff in Exhibit C, the curve at SW 136th Street/ 12th Avenue SW creates an awkward 'Y' configuration relative to the extension of SW 136th Street (see Exhibit A, Attachment 2, Sheet C2.1).

6. Novas has proposed SW 136th Street improvements that follow the existing roadway as it curves south, consisting of a bulb-out for extension of their driveway to 136th along with sidewalks. In this configuration, the proposed improvements extend into the right-of-way. Westmark representatives at the hearing and in Exhibit B are requesting that these improvements be moved north out of the right-of-way, since they would complicate future extension of SW 136th Street to the west. Staff concurs and has recommended this as a condition of approval, but also notes in Exhibit C that this will create an awkward 'Y' that may require Westmark to redevelop the roadway to assure access to all adjoining properties, such as the apartment complex to the south of SW 136th.

A desire to engage in cooperative planning has been expressed by all parties involved. Staff has suggested that a shared driveway developed off the existing street may be an option to provide both Novas and Westmark reasonable access to their properties. There appears to be sufficient room within the full-width portion of the right-of-way to develop some form of shared access/entrance/driveway for the two properties. City staff has indicated that this would likely require a street use permit. As such, there is an opportunity for the City, Novas and Westmark to combine their expertise to find an acceptable access solution.

Further, it appears to this Examiner that a joint access can be devised such that SW 136th Street could be extended without the need of tearing up any preceding improvements. As a practical matter relative to sidewalks, connecting from the south side of 136th to the north could be achieved (as an example) via a slightly raised pedestrian crossing, acting

as a broad flat speed-bump. This could be done instead of a sidewalk and would not require removal in the future.

7. Westmark representatives have also requested that Novas provide frontage improvements for the entire length of the applicants' property. Exhibit B provides a reiteration of the concerns and requests made by Westmark at the hearing, along with one example where a project is being required to provide frontage improvements along the length of the property. The Examiner has also reviewed past cases he has been involved with.

At the hearing and in Exhibit C, City staff have maintained that the requirement to provide SW 136th Street frontage improvements to the point of the mid-site access is commensurate with the project's impacts: i.e. access to the site via 136th. Since there would be no traffic on 136th beyond the mid-site driveway, then there is no nexus to require Novas to provide frontage improvements beyond that point.

The Examiner concurs with staff's analysis and interpretation. It is acknowledged that there are a number of examples where the City has required frontage improvements along the full length of a project property. In fact, there have been occasions where traffic improvements have been required off-site, such as installation of traffic signals or signs at impacted intersections. It should be noted, however, that such requirements have typically occurred where there is an extensive and interconnected surrounding street network, such that site access could be achieved from several directions. In this case there is only one route to the site. This is because surrounding existing land uses have been developed with cul-de-sacs and the presence of critical slopes has prevented the street network connecting to the west. Consequently, providing 136th frontage improvements west beyond the point of the mid-site access would benefit only Westmark and does not mitigate any project impacts.

A caveat on this conclusion would be that if Novas and Westmark can agree on a shared access solution with the right-of-way, then frontage improvements may be required for some distance west of the mid-site driveway. Note that street frontage improvement plans show an extension of a sidewalk south past the proposed driveway. That distance is roughly equivalent to the distance past the driveway where the right-of-way has full width, and would be logical point of extended frontage improvement mitigation.

8. Finally, the request by Westmark representatives to require frontage improvements along the whole length of the Novas property has the effect of requiring improvements of one applicant to the benefit of another applicant whose project has not yet been permitted.

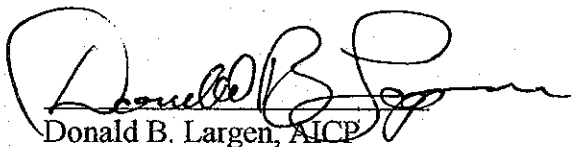
RECOMMENDATION

Based upon the foregoing findings and conclusions, it is recommended that the request for development of a medical facility on the subject site be approved, subject to the following conditions:

1. The applicant is responsible for ensuring compliance with all provisions contained in the Burien Municipal Code (including but not limited to the Zoning Code, Building Code and Fire Code), the 2005 King County Surface Water Design Manual and the 2008 Burien Road Standards. See Exhibit A, Attachment 3 for a summary of the City's development standards. It is the responsibility of the applicant to ensure compliance with the various provisions contained in these documents.
2. All site development plans submitted for the project shall indicate those significant trees to be preserved and shall include all tree protective measures as outline in BMC 19.
3. Prior to final inspection and issuance of an occupancy permit, the Applicant shall provide the Community Development Department with a manual irrigation plan and security to insure landscaping survival for a period of 2 years.
4. Prior to Building Permit submittal consider adding a pedestrian connection from the north eastern entrance of the Mental Health Facility to the Main Entrance in order to provide a comprehensive system of walkways throughout the campus.
5. All design, grading and construction shall follow the recommendations of the "Geological/Geotechnical Assessment" prepared by Gary Flowers, Geological and Geotechnical Consulting, dated January 21, 2009.
6. Prior to Building Permit approval address the comments in the City Geotechnical Engineer's review memo dated April 10, 2009 to reduce risks of erosion.
7. Prior to Building Permit approval, submit detailed access and frontage improvement plans for the project, including curb, gutter and sidewalks for review and approval by the City's Public Works Department. The plans shall be in accordance with the 2008 Burien Road Standards and address the issues expressed in the City's Development Review Engineer's memorandum dated April 8, 2009.
8. At a minimum, the proposed western (i.e. mid-site) driveway entry and associated landscaping shall be relocated north to align with existing frontage improvements and to allow for the logical extension of SW 136th Street frontage improvements. In addition, Novas, Westmark and City staff are asked to collaborate on a joint access/driveway/entrance within the SW 136th Street right-of-way prior to City Council review. Should an acceptable plan/configuration be reached, then Novas should provide SW 136th Street frontage improvements along their property for the distance equal to where there is full right-of-way width.

9. Prior to any work within the SW 136th Street or Ambaum Boulevard SW right-of-ways, the Applicant shall apply for a right-of-way use permit.
10. A National Pollutant Discharge Elimination System (NPDES) construction stormwater permit from the Washington State Department of Ecology is required prior to issuance of any development permits.
11. Prior to Building Permit approval, submit detailed stormwater improvement plans designed in accordance with the 2005 King County Surface Water Design Manual as adopted by the City, for review and approval by the City Public Works Department.
12. Prior to Building Permit approval, the Fire Marshal must approve the plans to ensure adequate fire flow has been provided.

Entered this 10th day of June, 2009.



Donald B. Largen, AICP
Hearing Examiner

CITY COUNCIL REVIEW AND DECISION

The City Council will take final action on this application in accordance with the provisions of BMC 19.65.075.

JUDICIAL REVIEW

The following is a summary of the deadlines and procedures for judicial review.

BMC 19.65.060 allows the city's final decision to be appealed by filing a land use petition in King County Superior Court. Such petition must be filed within 21 days after issuance of the decision, as provided in RCW 36.70C. Requirements for fully exhausting City administrative appeal opportunities must first be fulfilled.

EXHIBITS

The following exhibits were offered and entered into the record:

- A. Staff Recommendation to the Hearing Examiner with attachments dated May 5, 2009.
- B. Comment letter from Groen, Stephens & King, LLP dated May 29, 2009.
- C. Response letter from City Attorney dated June 3, 2009.

PARTIES OF RECORD

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